

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

IN RE:

RICHARD DOUGLAS CULLINAN,

Debtor.

Case No. 22-51326-WLH
Chapter 11

COASTAL STATES BANK,

Plaintiff,

Adv. Proc. No: 22-05078-wlh

v.

RICHARD DOUGLAS CULLINAN,
CHRISTINA M. CULLINAN, FIFTH THIRD
BANK, NATIONAL ASSOCIATION, AND
CREDIBILITY CAPITAL, INC.,

Defendants.

**COASTAL STATES BANK’S STATEMENT OF MATERIAL FACTS IN SUPPORT OF
ITS MOTION FOR SUMMARY JUDGMENT**

COMES NOW, Coastal States Bank (“CSB”), and files this Statement of Material Facts in Support of its Motion for Summary Judgment, pursuant to LBR 7056-1(a)(1), respectfully showing this Honorable Court as follows:

1. On August 21, 2017, Richard Cullinan (“Mr. Cullinan”) obtained a loan from Cornerstone Bank (“Cornerstone”) in the amount of \$404,969.00 (the “Loan”). [Doc. 11] at p. 5, ¶ 1; *see also* [Claim No. 6-1]. As evidence of the Loan, Mr. Cullinan executed a promissory note (the “Note”) in favor of Cornerstone. *Id.*; *see also* [Claim No. 6-1, Part 2].

2. Mr. Cullinan and Christina Cullinan (“Ms. Cullinan”) executed a Security Deed conveying the property located at 305 Cannady Court, Atlanta, GA 30350 (the “Property”) to

Cornerstone, which was recorded on August 29, 2017, in Deed Book 57896, Page 402, Fulton County, Georgia records (the “First Security Deed”). [Doc. 11] at p. 6, ¶ 2; *see also* [Claim No. 6-1, Part 3].

3. On or around August 21, 2017, Mr. Cullinan and Ms. Cullinan executed a Home Equity Line of Credit Security Deed in favor of Cornerstone, recorded on August 29, 2017, in Deed Book 57896, Page 414, Fulton County, Georgia records (the “Second Security Deed”). [Doc. 11] at p. 6, ¶ 3. The Second Security Deed secured a line of credit up to \$50,000.00. *Id.*

4. On January 16, 2020, Cornerstone executed a Cancellation of Deed to Secure Debt (the “Cancellation”), purporting to cancel the First Security Deed. *Id.* at ¶ 4. The Cancellation was recorded on January 30, 2020, in Deed Book 61111, Page 344, Fulton County, Georgia records. *Id.* A true and correct copy of the Cancellation is attached to the Complaint as Exhibit “C”. *See* [Doc. 1] at p. 29; [Doc. 6] at p. 3, ¶ 13; [Doc. 9] at p. 3, ¶ 13 (Complaint and Answers admitting to authenticity of Exhibit C to Complaint).

5. At the time that the Cancellation was recorded, the Loan was not paid in full. *Id.* at ¶ 5; *see also* [Claim 6-1] at p. 2 (outstanding loan balance at time proof of claim was filed was \$372,168.67).

6. The Cancellation erroneously states that the Loan was “paid in full . . .” *See* [Doc. 1] at p. 29; [Doc. 6] at p. 3, ¶ 13; [Doc. 9] at p. 3, ¶ 13.

7. Between the time that the Cancellation was executed and recorded and the current time, Mr. and Ms. Cullinan did not execute any other deeds to secure debt related to the Property. *Id.* at ¶ 6.

8. On August 17, 2021, Fifth Third Bank recorded a Writ of Fieri Facias against Mr. Cullinan (and other entities) in Lien Book 5150, Page 670, Fulton County, Georgia records (the “Fifth Third FiFa”). *Id.* at ¶ 7.

9. The Fifth Third FiFa is in the face amount of \$1,003,898.97 (\$892,081.63 in principal, \$96,867.12 in interest, \$1,920.90 in fees, and \$13,029.32 in attorney’s fees). *See* [Claim 7-1, Part 2].

10. On February 11, 2022, Credibility Capital, Inc. recorded a Writ of Fieri Facias (the “Credibility Lien”) against Mr. Cullinan, recorded at Lien Book 5213, Page 486, Fulton County, Georgia records. *See* [Doc. 1] at p. 31; [Doc. 9] at p. 3, ¶ 15.

11. The face amount of the Credibility Lien is \$145,566.99. *See id.*

12. On February 17, 2022, Mr. Cullinan filed Chapter 11 Bankruptcy, Case No. 22-51326 (Bankr. N.D. Ga.) (the “Bankruptcy Case”). [Doc. 11] at p. 6, ¶ 8.

13. In 2021, CSB purchased Cornerstone Bank. *Id.* at ¶ 9. CSB is the current holder of the Note and successor in interest to Cornerstone *Id.*; *see also* [Claim 6-1].

14. On May 26, 2022, this Court entered an Order in the Bankruptcy Case granting Mr. Cullinan’s Motion to Sell Real Property, which approved a sale of the Property. *Id.* at ¶ 10; *see also* [Bk. Doc. 49]. The Order provided that “[u]pon closing of the Sale, all liens, claims, and encumbrances on the Property shall attach to the proceeds of the Sale . . . to the same extent, validity, and priority as they existed on the Petition Date, unless the Court has entered an order avoiding all or any portion of a creditor’s lien.” *Id.*; *see also* [Bk. Doc. 49].

15. The sale of the Property closed on May 27, 2022. *Id.* at ¶ 11; *see also* [Bk. Doc. 55]. The Second Security Deed was paid off at the closing. *See* [Bk. Doc. 55]. After the

satisfaction of the Second Security Deed and other expenses paid at closing, \$704,787.88 remained (the “Remaining Proceeds”).

16. On June 6, 2022, Mr. Cullinan filed a motion (the “Disbursement Motion”) in the Bankruptcy Case to disburse all of the Remaining Proceeds except for \$377,657.13 representing CSB’s asserted first priority lien on the Property” [Bk. Doc. 56] at p. 4, ¶ 5. The Disbursement Motion was granted on July 5, 2022. [Bk. Doc. 65].

Respectfully submitted, this 21st day of September, 2022.

/s/ Bret J. Chaness
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CERTIFICATE OF SERVICE

I hereby certify that on September 21, 2022, the within and foregoing was filed via the Court’s CM/ECF system, which will serve notice on all registered parties who have appeared in this action. In addition, I certify that on the same date, I caused a copy of the within and foregoing to be served by U.S. First Class Mail, addressed as follows:

Christina Cullinan
3590 Valverde Circle
Jacksonville, FL 32224

/s/ Bret J. Chaness
BRET J. CHANESS (GA Bar No. 720572)